APPEAL NO. 032374
FILED OCTOBER 23, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on August 19, 2003. The hearing officer determined that the appellant's (claimant herein) compensable injury of _____, does not extend to and include a right shoulder injury. The claimant appeals, contending that the hearing officer's decision is contrary to the evidence. The respondent (carrier herein) replies that the evidence supports hearing officer's decision. The carrier also objects to the attachments to the claimant's appeal which were not admitted into evidence at the CCH and to the claimant's description on appeal of her statements at the benefit review conference (BRC) which were not in evidence at the CCH.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant attaches numerous documents to her appeal. We note that we will not generally consider evidence not submitted into the record, and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Willis, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Applying these standards we will not consider any of the attachments to the claimant's appeal, which were not admitted into evidence at the CCH.

In her appeal the claimant makes numerous references to her "testimony" at the BRC. The BRC is not an evidentiary hearing. It is essentially a mediation conference at which the parties attempt to resolve their disputes, and failing agreement, from which the benefit review officer prepares a report outlining the disputed issues and the parties' positions on these issues. In reviewing this case, we can only consider the evidence at the CCH, the sworn testimony, and exhibits admitted into evidence.

It was undisputed at the CCH that the claimant's compensable injury includes right carpal tunnel syndrome (CTS). The claimant argued that her injury extends to her right shoulder because the treatment of her right CTS included immobilizing her right upper extremity in a splint. The claimant contends that the immobilization of her right upper extremity put nonnormal stress on her right shoulder, causing an injury to her right shoulder. This theory was supported by both the claimant's testimony and medical

evidence, most notably medical evidence from Dr. L, who testified live at the CCH. The carrier presented contrary medical evidence.

As stated in Maryland Casualty Co. v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e. per curiam, 432 S.W.2d 515):

> The law is well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefore, causes other injuries which render the employee incapable of work.

The issue of whether the subsequent injury was caused by the compensable injury, or the proper and necessary treatment of it, is generally one of fact. *See* Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993; Texas Workers' Compensation Commission Appeal No. 93855, decided November 9, 1993. In the present case, the hearing officer recognized that the treatment of a compensable injury can cause additional compensable injuries. He was, however, not convinced by the claimant's evidence that the treatment of the claimant's CTS caused an injury to her right shoulder.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

In the present case, there was simply conflicting expert medical evidence, and it was the province of the hearing officer to resolve these conflicts. Applying the above

standard of review, we find that the hearing officer's decision was sufficiently supported by the evidence in the record.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TIG SPECIALTY** and the name and address of its registered agent for service of process is

BOB KNOWLES
5205 NORTH 0'CONNOR BOULEVARD
IRVING, TEXAS 75039.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Margaret L. Turner
Appeals Judge